

## 32 Am. Jur. 2d False Imprisonment II Refs.

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment

John Bourdeau, J.D.

### II. Criminal Liability

[Topic Summary](#) | [Correlation Table](#)

## Research References

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#) 🔑 43, 44

### A.L.R. Library

A.L.R. Index, False Imprisonment and Arrest

West's A.L.R. Digest, [False Imprisonment](#) 🔑 43, 44

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## 32 Am. Jur. 2d False Imprisonment § 154

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment


John Bourdeau, J.D.

### II. Criminal Liability

## § 154. Criminal false imprisonment or false arrest, generally

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  43

### Forms

Forms relating to indictment or information for false imprisonment, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

The definition of false imprisonment as either a crime or a tort is generally the same,<sup>1</sup> as the unlawful violation of the personal liberty of another.<sup>2</sup> The general principles applicable in the civil action also apply in criminal proceedings,<sup>3</sup> except as the criminal prosecution is affected by the general laws of criminal jurisprudence,<sup>4</sup> such as that there must be criminal intent.<sup>5</sup>

A person may be convicted for aiding and abetting in the commission of the offense of false imprisonment,<sup>6</sup> or as an accomplice to that crime.<sup>7</sup> The crime of attempted criminal confinement<sup>8</sup> or for attempted unlawful imprisonment.<sup>9</sup> has also been recognized.

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### Footnotes

<sup>1</sup> [Garcia v. City of Merced](#), 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law); [Street v. State](#), 307 Md. 262, 513 A.2d 870, 67 A.L.R.4th 1095 (1986).

<sup>2</sup> [Garcia v. City of Merced](#), 637 F. Supp. 2d 731 (E.D. Cal. 2008) (applying California law); [Fermino v. Fedco, Inc.](#), 7 Cal. 4th 701, 30 Cal. Rptr. 2d 18, 872 P.2d 559 (1994) (noting that in either case, no motive to cause harm is required); [Lyons v. Fire Ins. Exchange](#), 161 Cal. App. 4th 880, 74 Cal. Rptr. 3d 649 (2d Dist. 2008).

<sup>3</sup> [People v. Agnew](#), 16 Cal. 2d 655, 107 P.2d 601 (1940); [Kroeger v. Passmore](#), 36 Mont. 504, 93 P. 805 (1908).

4 Am. Jur. 2d, Criminal Law §§ 1 to 1220.

5 § 155.

6 *People v. Henderson*, 19 Cal. 3d 86, 137 Cal. Rptr. 1, 560 P.2d 1180 (1977) (overruled on other grounds by, *People v. Flood*, 18 Cal. 4th 470, 76 Cal. Rptr. 2d 180, 957 P.2d 869 (1998)).

7 *Wheeler v. State*, 749 N.E.2d 1111 (Ind. 2001).

8 *Boyd v. State*, 766 N.E.2d 396 (Ind. Ct. App. 2002) (attempted to shove victim into vehicle).

9 *People v. Parkman*, 20 Misc. 3d 52, 862 N.Y.S.2d 702 (App. Term 2008).

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## 32 Am. Jur. 2d False Imprisonment § 155

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment


John Bourdeau, J.D.

### II. Criminal Liability

## § 155. Elements of criminal false imprisonment or false arrest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  43

### Forms

Forms relating to elements of false imprisonment, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

At common law, false imprisonment was the unlawful restraint or detention of another against his or her will,<sup>1</sup> without authority of law, by actual force or reasonably apprehended force.<sup>2</sup> Some formulations, generally based on statutes, are that a person commits the offense of unlawful restraint when the person knowingly, without legal authority, detains another,<sup>3</sup> or that false imprisonment or felonious restraint occurs when a person knowingly restrains another unlawfully, so as to interfere substantially with the victim's liberty.<sup>4</sup> The additional requirement that the confinement be without the victim's consent is sometimes stated.<sup>5</sup> The requisite criminal intent,<sup>6</sup> such as intentionally<sup>7</sup> or knowingly,<sup>8</sup> must be established. False imprisonment generally does not require specific intent,<sup>9</sup> although under some statutes, there must be a specific intent to restrain,<sup>10</sup> particularly if the crime is in the first degree.<sup>11</sup>

The jury decides questions of knowledge and intent, if there is sufficient evidence.<sup>12</sup>

### Caution:

An instruction that departs from statutory definitions and clouds the essential elements of the offense does not fairly inform the jury of the law that applies in the case, thereby necessitating a new trial.<sup>13</sup>

Footnotes

- <sup>1</sup> [Garcia-Perlera v. State](#), 197 Md. App. 534, 14 A.3d 1164 (2011); [Paz v. State](#), 125 Md. App. 729, 726 A.2d 880 (1999).
- <sup>2</sup> [State v. Berntsen](#), 295 S.C. 52, 367 S.E.2d 152 (1988).
- <sup>3</sup> [People v. Wisslead](#), 108 Ill. 2d 389, 92 Ill. Dec. 226, 484 N.E.2d 1081 (1985).
- <sup>4</sup> [Stiers v. State](#), 229 S.W.3d 257 (Mo. Ct. App. W.D. 2007); [State v. Savage](#), 172 N.J. 374, 799 A.2d 477 (2002).  
To prove false imprisonment, there must have been an arrest, confinement, or detention of a person, without legal authority, which violates the person's personal liberty. [Turner v. State](#), 253 Ga. App. 760, 560 S.E.2d 539 (2002).
- <sup>5</sup> [Wilson v. State](#), 304 Ga. App. 743, 698 S.E.2d 6 (2010) (against his or her will); [Perrey v. State](#), 824 N.E.2d 372 (Ind. Ct. App. 2005); [Stiers v. State](#), 229 S.W.3d 257 (Mo. Ct. App. W.D. 2007).  
The crime of false imprisonment has three elements: intentional confinement or restraint, without the victim's consent, with knowledge that the perpetrator has no lawful authority to confine or restrain the victim. [In re Joseph E.G.](#), 2001 WI App 29, 240 Wis. 2d 481, 623 N.W.2d 137 (Ct. App. 2000).  
As to consent viewed as a defense, see § 160.
- <sup>6</sup> [State v. Rice](#), 167 Conn. App. 615, 142 A.3d 1267 (2016), certification denied, 323 Conn. 932, 150 A.3d 232 (2016); [Com. v. Trunk](#), 311 Pa. 555, 167 A. 333 (1933).
- <sup>7</sup> [State v. Williams](#), 172 Conn. App. 820, 162 A.3d 84 (2017); [People v. Parkman](#), 20 Misc. 3d 52, 862 N.Y.S.2d 702 (App. Term 2008).
- <sup>8</sup> [Stiers v. State](#), 229 S.W.3d 257 (Mo. Ct. App. W.D. 2007); [State v. Thurman](#), 273 Neb. 518, 730 N.W.2d 805 (2007); [State v. Zubhuza](#), 166 N.H. 125, 90 A.3d 614 (2014).  
The term "knowingly," as used in a statute under which a person commits the crime of unlawful imprisonment if one "knowingly restrains another person," modifies all components of the statutory definition of "restrain," and thus, to be guilty of unlawful imprisonment, a defendant must knowingly restrict another's movements without that person's consent, without legal authority, and in a manner that substantially interferes with that person's liberty. [State v. Warfield](#), 103 Wash. App. 152, 5 P.3d 1280 (Div. 2 2000).
- <sup>9</sup> [Crain v. State](#), 894 So. 2d 59 (Fla. 2004); [State v. Wiggett](#), 273 Kan. 438, 44 P.3d 381 (2002).  
As to this distinguishing it from kidnapping, see § 158.
- <sup>10</sup> [State v. Dokken](#), 312 N.W.2d 106 (Minn. 1981).
- <sup>11</sup> [State v. Williams](#), 172 Conn. App. 820, 162 A.3d 84 (2017) (unlawful restraint).
- <sup>12</sup> [State v. Van](#), 268 Neb. 814, 688 N.W.2d 600 (2004).  
As to the sufficiency of the evidence, see § 162.
- <sup>13</sup> [State v. Plentychief](#), 464 N.W.2d 373 (N.D. 1990).

## 32 Am. Jur. 2d False Imprisonment § 156

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment


John Bourdeau, J.D.

### II. Criminal Liability

## § 156. Nature of restraint required for criminal false imprisonment or false arrest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  43

### Forms

Forms relating to elements of false imprisonment, see Am. Jur. Pleading and Practice Forms, False Imprisonment [[Westlaw®\(r\) Search Query](#)]

Restraint of a person's freedom of movement is at the heart of the offense of false imprisonment,<sup>1</sup> or as otherwise stated, the essence of false imprisonment is the act of depriving the victim of personal liberty or freedom of movement.<sup>2</sup> To constitute a case of criminal false imprisonment, it is essential that there be some restraint of the person, but it is not necessary that there be confinement in a jail or a prison.<sup>3</sup> For instance, confinement of another person while the defendant is in the process of effectuating an escape may be sufficient to support a conviction for criminal confinement.<sup>4</sup> The crime may be committed by acts or words,<sup>5</sup> merely operating upon the person's will, or by personal violence,<sup>6</sup> or both.<sup>7</sup> It may also be committed by deception.<sup>8</sup> However, under a statute providing that a person is guilty of unlawful imprisonment who knowingly restrains another person, and defining "restraint" as restricting a person's movements without consent and without legal authority in a manner that interferes substantially with liberty, the term "substantial" means a "real" or "material" interference with the liberty of another, as contrasted to a petty annoyance, a slight inconvenience, or an imaginary conflict.<sup>9</sup>

The similar offense of criminal confinement requires proof of substantial interference with a person's liberty,<sup>10</sup> but not necessarily by touching or attempting to touch the person; confinement can be accomplished by fraud, enticement, force, or the threat of force.<sup>11</sup> Any amount of force can cause a confinement, because force, however brief, equals confinement.<sup>12</sup> A brief detention may be sufficient to constitute criminal false imprisonment or unlawful restraint.<sup>13</sup> However, in one case, the fact that a child was bound on two or three occasions for less than 10 minutes while the defendant took photographs of the child with the child's shirt removed was insufficient to show the requisite intent to restrict the child's freedom of movement for purposes of proving the intent element of false imprisonment, in light of evidence that the child never felt as if he were being held against his will or that the defendant continued the restraint after the child desired to be released.<sup>14</sup>

Under some statutes, a false imprisonment charge is supported if a person's personal liberty is violated,<sup>15</sup> by compelling the victim to remain or go where the victim does not wish to.<sup>16</sup> "Confinement" may include the use of force to remove a person from one location to another.<sup>17</sup>

A false imprisonment statute, which did not define the term "confines," was not vague, in violation of due process, since the term "confine" has a commonly understood meaning, which would place a person of common intelligence on notice of prohibited acts.<sup>18</sup>

The gist of the crime of unlawful restraint is the detention of a person by some conduct that prevents the victim from moving from one place to another,<sup>19</sup> or even more succinctly, the hallmark of an unlawful restraint is a restraint.<sup>20</sup>

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#### Footnotes

- <sup>1</sup> [People v. Reed](#), 78 Cal. App. 4th 274, 92 Cal. Rptr. 2d 781 (5th Dist. 2000).  
Absent the element of holding the victims against their will, there is no crime of false imprisonment. [Lopez v. State](#), 260 Ga. App. 713, 580 S.E.2d 668 (2003).
- <sup>2</sup> [Oakes v. State](#), 85 So. 3d 526 (Fla. 1st DCA 2012).
- <sup>3</sup> [People v. Grant](#), 8 Cal. App. 4th 1105, 10 Cal. Rptr. 2d 828 (5th Dist. 1992).
- <sup>4</sup> [McDonald v. State](#), 511 N.E.2d 1066 (Ind. 1987).
- <sup>5</sup> [People v. Islas](#), 210 Cal. App. 4th 116, 147 Cal. Rptr. 3d 872 (2d Dist. 2012); [State v. Singleton](#), 130 N.M. 583, 2001-NMCA-054, 28 P.3d 1124 (Ct. App. 2001).
- <sup>6</sup> [People v. Dominguez](#), 180 Cal. App. 4th 1351, 103 Cal. Rptr. 3d 864 (2d Dist. 2010), as modified, (Jan. 19, 2010); [People v. Reed](#), 78 Cal. App. 4th 274, 92 Cal. Rptr. 2d 781 (5th Dist. 2000).
- <sup>7</sup> [People v. Dominguez](#), 180 Cal. App. 4th 1351, 103 Cal. Rptr. 3d 864 (2d Dist. 2010), as modified, (Jan. 19, 2010).
- <sup>8</sup> [Garcia-Perlera v. State](#), 197 Md. App. 534, 14 A.3d 1164 (2011).
- <sup>9</sup> [State v. Robinson](#), 20 Wash. App. 882, 582 P.2d 580 (Div. 3 1978), judgment aff'd, 92 Wash. 2d 357, 597 P.2d 892 (1979).
- <sup>10</sup> [Cunningham v. State](#), 870 N.E.2d 552 (Ind. Ct. App. 2007).
- <sup>11</sup> [McDonald v. State](#), 511 N.E.2d 1066 (Ind. 1987).
- <sup>12</sup> [Harvey v. State](#), 719 N.E.2d 406 (Ind. Ct. App. 1999).
- <sup>13</sup> [Moore v. State](#), 340 Ga. App. 151, 796 S.E.2d 754 (2017); [People v. Sparks](#), 314 Ill. App. 3d 268, 247 Ill. Dec. 214, 731 N.E.2d 987 (4th Dist. 2000), appeal pending.
- <sup>14</sup> [State v. Dokken](#), 312 N.W.2d 106 (Minn. 1981).
- <sup>15</sup> [People v. Reed](#), 78 Cal. App. 4th 274, 92 Cal. Rptr. 2d 781 (5th Dist. 2000).
- <sup>16</sup> [People v. Williams](#), 7 Cal. App. 5th 644, 212 Cal. Rptr. 3d 728 (2d Dist. 2017).
- <sup>17</sup> [Hopkins v. State](#), 747 N.E.2d 598 (Ind. Ct. App. 2001).
- <sup>18</sup> [Alexander v. State](#), 279 Ga. 683, 620 S.E.2d 792 (2005) (defendant was on notice that placing his hand over the victim's mouth and pinning her to the bed, and thereby restricting her movement, was illegal).

<sup>19</sup> People v. Brians, 315 Ill. App. 3d 162, 247 Ill. Dec. 777, 732 N.E.2d 1109 (1st Dist. 2000).

<sup>20</sup> State v. Williams, 172 Conn. App. 820, 162 A.3d 84 (2017).

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## 32 Am. Jur. 2d False Imprisonment § 157

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment


John Bourdeau, J.D.

### II. Criminal Liability

## § 157. Criminal false imprisonment or false arrest as continuing offense

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  43

An unlawful imprisonment can be accomplished by a series of acts constituting a continuous course of conduct.<sup>1</sup> Under the continuing crime doctrine, the span of a confinement begins when the unlawful detention is initiated, and ends only when the victim both feels, and is in fact, free from detention,<sup>2</sup> and a separate confinement begins when the detention of the victim is reestablished.<sup>3</sup> However, there is also authority that false imprisonment is not a “continuing offense,” so a limit on the number of convictions concerning one incident that might apply for an “uninterrupted offense” or “continuing course of conduct” crime does not apply; thus a defendant may be convicted of multiple separate offenses for imprisonment of several people in the same incident.<sup>4</sup>

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### Footnotes

- <sup>1</sup> [State v. Apao, 95 Haw. 440, 24 P.3d 32 \(2001\).](#)
- <sup>2</sup> [Bartlett v. State, 711 N.E.2d 497 \(Ind. 1999\).](#)
- <sup>3</sup> [Boyd v. State, 766 N.E.2d 396 \(Ind. Ct. App. 2002\).](#)
- <sup>4</sup> [Smith v. State, 296 Ark. 451, 757 S.W.2d 554 \(1988\).](#)

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## 32 Am. Jur. 2d False Imprisonment § 158

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment


John Bourdeau, J.D.

### II. Criminal Liability

## § 158. Relation of criminal false imprisonment or false arrest to other offenses

[Topic Summary](#) | [Correlation Table](#) | [References](#)

#### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  43

#### A.L.R. Library

[Seizure or detention for purpose of committing rape, robbery, or other offense as constituting separate crime of kidnapping, 39 A.L.R.5th 283](#)

Kidnapping is accomplished by abduction, which includes restraint, but the crime of unlawful restraint requires only restraint.<sup>1</sup> The difference between kidnapping and false imprisonment may be the movement of the victim;<sup>2</sup> or asportation,<sup>3</sup> the required intent,<sup>4</sup> or the purpose of the confinement.<sup>5</sup> Furthermore, the increasingly serious levels of kidnapping consist of false imprisonment plus a combination of aggravating factors, such as a risk of bodily injury or use of a deadly weapon, that may elevate the crime to kidnapping.<sup>6</sup>

Some courts state that false imprisonment<sup>7</sup> or felonious restraint<sup>8</sup> is a lesser included offense of kidnapping. A particular kidnapping statute may be broad enough to include, yet not require, proof of the elements constituting false imprisonment, and incorporate false imprisonment as one method of proving kidnapping, in which case a trial court may correctly refuse to instruct on the common law crime of false imprisonment as a lesser included offense of statutory kidnapping.<sup>9</sup> Under other statutes, kidnapping can be committed without committing unlawful restraint, and consecutive sentences for the two offenses are proper.<sup>10</sup> To determine whether kidnapping or unlawful restraint may be charged as a separate offense, courts consider whether the confinement, movement, or detention was merely incidental to the accompanying felony or whether it was significant enough, in and of itself, to warrant independent prosecution.<sup>11</sup>

Unlawful imprisonment is a separate crime from rape,<sup>12</sup> where each requires different elements, and a conviction for both is proper, even though the convictions arise from a single incident, particularly where the defendant confined the victim both before and after the rape.<sup>13</sup> However, where there are convictions for both rape and unlawful imprisonment, and the rape conviction is reversed, the related conviction for unlawful imprisonment must also be reversed, if that conviction is factually dependent on the rape conviction.<sup>14</sup>

A charge of unlawful imprisonment exists independently of the charge of sexual abuse, since the elements of both crimes are totally different, and the crime of sexual abuse can be committed without an unlawful imprisonment where an underage victim is abused without resisting.<sup>15</sup>

The offenses of false imprisonment and robbery are separate, if they do not require proof of identical elements.<sup>16</sup> Robbery and false imprisonment are separate offenses only if the confinement was beyond or longer than that inherently necessary to complete the robbery.<sup>17</sup> Similarly, criminal confinement is inherently included in robbery, because the use or threat of force element needed to support a robbery conviction is not distinct from the “confinement” element needed to support a criminal confinement conviction, and thus, unless there is force used beyond that which is inherently necessary in any robbery, there cannot be a separate criminal confinement conviction.<sup>18</sup>

A false imprisonment often constitutes or includes a common law assault,<sup>19</sup> and may be prosecuted as a distinct offense under the common law.<sup>20</sup> While false imprisonment is a separate offense from aggravated battery and aggravated assault,<sup>21</sup> it may be merged with battery if the two crimes are committed by the same act.<sup>22</sup> A conviction for both confinement and attempted battery is proper, since confinement can be accomplished by fraud, enticement, force, or threat of force, and, unlike battery, does not require proof of touching or attempting to touch the victim.<sup>23</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Second-degree false imprisonment was not a lesser-included offense of kidnapping, and even if second-degree false imprisonment was a lesser-included offense of kidnapping, there was no rational basis in the evidence for the trial court to give the proffered instruction on second-degree false imprisonment in prosecution of defendant for kidnapping victim with purpose of terrorizing her; defendant’s conduct was undertaken with the purpose of terrorizing his victim, and his own admission left no rational basis to believe he restrained victim with any purpose other than to terrorize her. [Ark. Code Ann. §§ 5-1-110, 5-11-102\(a\)\(6\), 5-11-104\(a\)](#). [Wallace v. State, 2017 Ark. App. 659, 537 S.W.3d 269 \(2017\)](#).

## [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [Romero v. State, 34 S.W.3d 323 \(Tex. App. San Antonio 2000\)](#), petition for discretionary review refused, (Apr. 11, 2001).  
The elements of kidnapping, including concealment, are discussed in [Am. Jur. 2d, Abduction and Kidnapping §§ 21 to 30](#).
- <sup>2</sup> [U.S. v. Chitwood, 676 F.3d 971 \(11th Cir. 2012\)](#) (applying Georgia law).
- <sup>3</sup> [Kirt v. State, 309 Ga. App. 227, 709 S.E.2d 840 \(2011\)](#).
- <sup>4</sup> [State v. Hargrave, 225 Ariz. 1, 234 P.3d 569 \(2010\)](#); [State v. Smith, 840 So. 2d 987 \(Fla. 2003\)](#) (false imprisonment does not require proof of the intent to commit or facilitate commission of any felony); [Bassie v. State, 726 N.E.2d 242 \(Ind. 2000\)](#) (intent to use confined person as a shield or hostage constitutes kidnapping); [State v. Wiggett, 273 Kan. 438, 44 P.3d 381 \(2002\)](#); [State v. Boozer, 210 N.C. App. 371, 707 S.E.2d 756 \(2011\)](#).
- <sup>5</sup> [U.S. v. Flores-Granados, 783 F.3d 487 \(4th Cir. 2015\)](#), cert. denied, 136 S. Ct. 224, 193 L. Ed. 2d 169 (2015) (applying North Carolina law); [State v. Boozer, 210 N.C. App. 371, 707 S.E.2d 756 \(2011\)](#).

- 6 State v. Cecil, 409 S.W.3d 599 (Tenn. 2013).
- 7 State v. Niska, 514 N.W.2d 260 (Minn. 1994).
- 8 State v. Allah, 231 N.C. App. 88, 750 S.E.2d 903 (2013), writ denied, review denied, 367 N.C. 808, 766 S.E.2d 676 (2014).
- 9 State v. Berntsen, 295 S.C. 52, 367 S.E.2d 152 (1988).
- 10 State v. Palmer, 206 Conn. 40, 536 A.2d 936 (1988).
- 11 State v. Jackson, 184 Vt. 173, 2008 VT 71, 956 A.2d 1126 (2008).
- 12 State v. Atkins, 130 Wash. App. 395, 123 P.3d 126 (Div. 3 2005).
- 13 Purter v. State, 515 N.E.2d 858 (Ind. 1987).
- 14 People v. Watson, 45 N.Y.2d 867, 410 N.Y.S.2d 577, 382 N.E.2d 1352 (1978).
- 15 Matter of David M., 93 Misc. 2d 545, 403 N.Y.S.2d 178 (Fam. Ct. 1978).
- 16 State v. Smith, 840 So. 2d 987 (Fla. 2003).
- 17 Russell v. State, 874 So. 2d 1256 (Fla. 4th DCA 2004).
- 18 Smith v. State, 881 N.E.2d 1040 (Ind. Ct. App. 2008).
- 19 § 7.
- 20 Doss v. State, 220 Ala. 30, 123 So. 231, 68 A.L.R. 712 (1929); Great Atlantic & Pacific Tea Co. v. Smith, 281 Ky. 583, 136 S.W.2d 759 (1939); Com. v. Brewer, 109 Pa. Super. 429, 167 A. 386 (1933).
- 21 State v. Waits, 848 So. 2d 1030 (Fla. 2003).
- 22 Jane v. State, 362 So. 2d 1005 (Fla. 4th DCA 1978) (defendant wrapping his arms around the victim in a “bear hug”).
- 23 McDonald v. State, 511 N.E.2d 1066 (Ind. 1987).

## 32 Am. Jur. 2d False Imprisonment § 159

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment


John Bourdeau, J.D.

### II. Criminal Liability

## § 159. Degree of offense of criminal false imprisonment or false arrest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  43

Under some statutes, force is an element of both felony and misdemeanor false imprisonment.<sup>1</sup> Misdemeanor false imprisonment then becomes a felony where the force used is greater than that reasonably necessary to effect restraint; in such circumstances the force is defined as violence with the false imprisonment effected by such violence a felony.<sup>2</sup> The additional force required for felony false imprisonment may come in the form of simply pulling a victim toward a location when the victim's liberty has already been violated.<sup>3</sup> False imprisonment may also become a felony if it involves menace,<sup>4</sup> fraud, or deceit,<sup>5</sup> or "terrorizing circumstances"<sup>6</sup> or circumstances that expose the victim to a substantial risk of serious physical injury,<sup>7</sup> or actually expose the victim to a risk of serious physical injury.<sup>8</sup> A charge of restraint under terrorizing circumstances or circumstances exposing the victim to the risk of serious bodily injury may constitute false imprisonment in the first degree, while other criminal restraint is characterized as false imprisonment in the second degree.<sup>9</sup>

In some jurisdictions, an express or implied threat of harm does not require the use of a deadly weapon or an express verbal threat to do additional harm to support a conviction for felony false imprisonment; threats can be exhibited in a myriad number of ways, verbally and by conduct.<sup>10</sup> On the other hand, the required element of the felony of confinement committed while armed with a deadly weapon or resulting in serious bodily harm can be provided, for example, by evidence of holding the victim at gunpoint or inflicting serious injuries,<sup>11</sup> by abandoning helpless victims in circumstances of danger,<sup>12</sup> or through confinement directed to accomplish murder and effected through concerted action with other perpetrators.<sup>13</sup> It may not be relevant, under a felonious restraint statute, whether the victim suffered serious physical injury, so long as the defendant exposed the victim to the risk of serious physical harm.<sup>14</sup> However, there is also authority that the serious bodily injury element of felony criminal confinement is not established, where there was no evidence that the injuries resulted from the victim being forcefully moved.<sup>15</sup>

At common law, false imprisonment is a misdemeanor.<sup>16</sup>

The Model Penal Code provides that a person commits the misdemeanor offense of false imprisonment if he or she knowingly restrains another unlawfully so as to interfere substantially with the other person's liberty.<sup>17</sup> A person who knowingly restrains another unlawfully in circumstances exposing the other person to risk of serious bodily injury, or who holds another in a condition of involuntary servitude, commits felonious restraint, a felony of the third degree.<sup>18</sup>

Footnotes

- <sup>1</sup> [People v. Ghipriel](#), 1 Cal. App. 5th 828, 205 Cal. Rptr. 3d 172 (4th Dist. 2016), review denied, (Oct. 26, 2016).
- <sup>2</sup> [People v. Ghipriel](#), 1 Cal. App. 5th 828, 205 Cal. Rptr. 3d 172 (4th Dist. 2016), review denied, (Oct. 26, 2016).
- <sup>3</sup> [People v. Ghipriel](#), 1 Cal. App. 5th 828, 205 Cal. Rptr. 3d 172 (4th Dist. 2016), review denied, (Oct. 26, 2016).
- <sup>4</sup> [People v. Williams](#), 7 Cal. App. 5th 644, 212 Cal. Rptr. 3d 728 (2d Dist. 2017).
- <sup>5</sup> [People v. Reed](#), 78 Cal. App. 4th 274, 92 Cal. Rptr. 2d 781 (5th Dist. 2000).
- <sup>6</sup> [State v. Thurman](#), 273 Neb. 518, 730 N.W.2d 805 (2007); [State v. Plentychief](#), 464 N.W.2d 373 (N.D. 1990).
- <sup>7</sup> [State v. Christian](#), 184 S.W.3d 597 (Mo. Ct. App. E.D. 2006); [State v. Thurman](#), 273 Neb. 518, 730 N.W.2d 805 (2007); [People v. Irby](#), 140 A.D.3d 1319, 33 N.Y.S.3d 530 (3d Dep't 2016), leave to appeal denied, 28 N.Y.3d 931, 40 N.Y.S.3d 359, 63 N.E.3d 79 (2016).  
The evidence was sufficient to find a "substantial risk of serious bodily injury," where the victims were bound and gagged and placed in a store's refrigerated meat locker, since they were thereby exposed to a risk of frostbite, pneumonia, or other health hazards. [Taylor v. State](#), 550 S.W.2d 695 (Tex. Crim. App. 1977).
- <sup>8</sup> [Payne v. Com.](#), 2011 WL 4430860 (Ky. 2011).
- <sup>9</sup> [State v. Schwartz](#), 219 Neb. 833, 366 N.W.2d 766 (1985).  
A defendant exposed a victim to a substantial risk of physical injury, so as to support a conviction for first degree unlawful restraint, where the defendant struck the victim in the face, grabbed her by the shirt, pinned her shoulders to a bed, wrapped her up like a rubber band, and pulled her hair. [State v. Jordan](#), 64 Conn. App. 143, 781 A.2d 310 (2001). Statutes prohibiting terroristic threats and first degree false imprisonment were constitutional as applied, even though the defendant contended that the acts occurred during a private, consensual relationship. [State v. Van](#), 268 Neb. 814, 688 N.W.2d 600 (2004).
- <sup>10</sup> [People v. Ghipriel](#), 1 Cal. App. 5th 828, 205 Cal. Rptr. 3d 172 (4th Dist. 2016), review denied, (Oct. 26, 2016).
- <sup>11</sup> [Tingle v. State](#), 632 N.E.2d 345 (Ind. 1994) (victim was held at point of shotgun while defendant ransacked the house); [State v. Vance](#), 240 Neb. 794, 484 N.W.2d 453 (1992) (husband and wife held at gunpoint, wife sexually assaulted).
- <sup>12</sup> [Jordan v. Com.](#), 703 S.W.2d 870 (Ky. 1985).
- <sup>13</sup> [Nelson v. State](#), 528 N.E.2d 453 (Ind. 1988).
- <sup>14</sup> [State v. Jordan](#), 64 Conn. App. 143, 781 A.2d 310 (2001); [State v. Christian](#), 184 S.W.3d 597 (Mo. Ct. App. E.D. 2006).
- <sup>15</sup> [Russell v. State](#), 743 N.E.2d 269 (Ind. 2001).
- <sup>16</sup> [Street v. State](#), 307 Md. 262, 513 A.2d 870, 67 A.L.R.4th 1095 (1986).
- <sup>17</sup> Model Penal Code § 212.3.
- <sup>18</sup> Model Penal Code § 212.2.

## 32 Am. Jur. 2d False Imprisonment § 160

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment


John Bourdeau, J.D.

### II. Criminal Liability

## § 160. Defenses to criminal false imprisonment or false arrest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  43

The good motives and purpose of the defendant are legitimate matters of defense to the crime of false imprisonment,<sup>1</sup> such as where the defendant claims to have detained the complainant only to protect the person from attempting suicide.<sup>2</sup> Where the requirement that the defendant knowingly and unlawfully confine a person is an element of the offense,<sup>3</sup> defendants who believed they were acting lawfully when they took a suspect into custody did not knowingly restrain the suspect without legal authority, as required to support a conviction for unlawful imprisonment.<sup>4</sup>

Consent may also be raised as a defense in a criminal false imprisonment or confinement case, as an attempt to negate an element of the crime.<sup>5</sup> Consent of the victim is no defense to false imprisonment, however, where the consent is induced by coercion or deception or where the victim is incapable of consenting due to unsoundness of mind or tenderness of years.<sup>6</sup> An instruction on the defense of consent is acceptable, so long as the charge and victim to which the issue of consent is applicable are clear to the jury.<sup>7</sup>

The facts of a particular case may rule out the possibility of self-defense as a viable defense to false imprisonment, as where the defendant fails to allege the victim's use of any unlawful force to which the defendant might be privileged to respond.<sup>8</sup>

Some statutes prescribe an offense of a bondsman detaining without a warrant, and allow a defense of mistaken belief.<sup>9</sup> However, a surety who arrests a bail jumper forcibly and without a warrant may not raise a good faith defense, in the absence of any authoritative interpretation of the state statute that would justify any reasonable belief that the surety's conduct did not constitute a crime.<sup>10</sup>

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### Footnotes

<sup>1</sup> [State v. Hembd](#), 305 Minn. 120, 232 N.W.2d 872 (1975); [Com. v. Trunk](#), 311 Pa. 555, 167 A. 333 (1933).

<sup>2</sup> [State v. Hembd](#), 305 Minn. 120, 232 N.W.2d 872 (1975).

- 3           § 155.
- 4           State v. Warfield, 103 Wash. App. 152, 5 P.3d 1280 (Div. 2 2000).
- 5           State v. Lawrence, 135 Ariz. 569, 663 P.2d 561 (1983); State v. Horswill, 75 Haw. 152, 857 P.2d 579 (1993); State v. Niska, 514 N.W.2d 260 (Minn. 1994).  
As to lack of consent as an element of the crime, see § 155.
- 6           People v. Dominguez, 180 Cal. App. 4th 1351, 103 Cal. Rptr. 3d 864 (2d Dist. 2010), as modified, (Jan. 19, 2010).  
As to the effect of consent to take children out of the state, see § 161.
- 7           State v. Horswill, 75 Haw. 152, 857 P.2d 579 (1993).
- 8           State v. Brown, 235 Neb. 374, 455 N.W.2d 547 (1990).
- 9           Walker v. Com., 127 S.W.3d 596 (Ky. 2004) (but holding that a court order merely that a fugitive's bond be forfeited subject to reinstatement if he is subsequently produced in court did not justify the bondsman's warrantless apprehension of the fugitive).
- 10          Austin v. State, 541 S.W.2d 162 (Tex. Crim. App. 1976).



## 32 Am. Jur. 2d False Imprisonment § 161

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment


John Bourdeau, J.D.

### II. Criminal Liability

## § 161. Confinement of children as criminal false imprisonment or false arrest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  43

### A.L.R. Library

[Liability, for false arrest or imprisonment, of private person detaining child, 20 A.L.R.3d 1441](#)

While a parental privilege as to the alleged confinement of the parent's own child may be a defense to a charge of unlawful imprisonment,<sup>1</sup> a parent is subject to criminal prosecution for false imprisonment of his or her child, where the act of confinement is done with the intent of endangering the child's health and safety, or to achieve an unlawful purpose, because such an act exceeds the scope of parental authority.<sup>2</sup>

Since the consent of a child's legal and physical custodian to take the child out of the state is a defense to the crime of false imprisonment of a child, where lack of consent is an element of the crime, there is no criminal liability for false imprisonment if the defendant has the consent of the child's custodian.<sup>3</sup> On the other hand, a defendant confined his daughter, without her consent, as required to support a criminal confinement conviction, where the defendant, who could not have contact with the victim, due to a protective order, grabbed her, held her hostage, and threatened to kill her.<sup>4</sup>

False imprisonment of children can be committed without committing the crime of custodial interference, since false imprisonment does not require the defendant's knowledge that he or she had no legal right to interfere with the victim's lawful custody of the children.<sup>5</sup>

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### Footnotes

<sup>1</sup> [State v. Lawrence, 135 Ariz. 569, 663 P.2d 561 \(1983\).](#)

<sup>2</sup> [People v. Checketts](#), 71 Cal. App. 4th 1190, 84 Cal. Rptr. 2d 491 (4th Dist. 1999) (parent sent child to attic to prevent a visiting social worker and neighbors from noticing the child's bruises and reporting the parent to the authorities).

<sup>3</sup> [State v. Niska](#), 514 N.W.2d 260 (Minn. 1994).  
As to lack of consent as an element, see § 155.

<sup>4</sup> [Richards v. State](#), 816 N.E.2d 72 (Ind. Ct. App. 2004).

<sup>5</sup> [Mutual of Enumclaw Ins. Co. v. Gutman](#), 172 Or. App. 528, 21 P.3d 101 (2001).

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## 32 Am. Jur. 2d False Imprisonment § 162

American Jurisprudence, Second Edition | May 2021 Update

### False Imprisonment


John Bourdeau, J.D.

### II. Criminal Liability

## § 162. Sufficiency of evidence of criminal false imprisonment or false arrest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  44

A conviction for criminal confinement may be sustained on the testimony of the victim alone.<sup>1</sup> Multiple convictions for false imprisonment, in connection with several persons imprisoned in a single incident, may be sustained without the necessity of calling every victim to testify that he or she felt restrained without consent or legal justification; the prosecution is not required to put every victim on the witness stand to satisfy the required proof of all the elements.<sup>2</sup>

Evidence has been found sufficient to support a conviction in cases involving unlawful imprisonment or similar charges where—

- the victim was forced into a closet against her will.<sup>3</sup>
- the victims testified that they were tied up nightly over a three-month period, and described the manner in which they were restrained and the bodily injuries they sustained as a result, and a physician described their injuries.<sup>4</sup>
- the victim was beaten too badly to move, and the defendant told police that the defendant intended to keep the victim there until the victim's appearance improved.<sup>5</sup>
- the victim testified that she did not leave to call police, because the defendant threatened to stab her with a screwdriver if she did.<sup>6</sup>
- the victims were held at gunpoint during a robbery and were not free to leave during that time.<sup>7</sup>
- the defendant and a codefendant brandished guns, demanded drugs, forced a husband and wife into a car and kept them captive at gunpoint, later participating in the sexual assault of the wife.<sup>8</sup>
- the defendant dragged a victim with whom he intended to have sex into alley at knife point.<sup>9</sup>
- the defendant refused to leave the victim's home, demanded sex, and threatened her at knife point.<sup>10</sup>
- the defendant forcibly entered the victim's vehicle at 2:00 a.m., robbed and sexually assaulted the victim, and implied further harm if the assault were reported to the authorities.<sup>11</sup>
- a rape victim could not escape for 14 hours.<sup>12</sup>
- the defendant knew that the victim, a one-year-old child, was in a car when he stole it, and took the victim without the mother's consent.<sup>13</sup>
- the victim got in the defendant's car, but instead of taking her home, the defendant made multiple stops, and when the victim asked to get out of the car, she was not allowed to do so.<sup>14</sup>
- the defendant took the victim in his car to a place other than home, despite her desire to be taken home, prevented her from leaving his vehicle by putting his arms around her and then blocking her path once she exited the car, and tackled her

- as she was running away and dragged her back to his vehicle; these acts exposed the victim to a substantial risk of physical injury, an element of first degree unlawful restraint.<sup>15</sup>
- the defendant's estranged wife testified that the defendant entered her home in violation of an order of protection, confronted her and her friend, bound her hands and feet, threatened to harm her and their daughter, and made repeated attempts to renew an attack on the friend, who had retreated to a locked bathroom.<sup>16</sup>
  - the defendant confined a 12-year-old victim by closing the door, turning off the light, standing in front of her as she sat on a table, and pushing her back, rendering her unable to resist.<sup>17</sup>
  - the defendant refused to open the door to his apartment to let the victim out, despite the contention that the defendant refused to open the door out of fear of being assaulted by the victim's family members outside the apartment.<sup>18</sup>
  - the victim testified that the defendant threatened to kill her if she told anyone about the assault, pulled her back into an apartment when she tried to escape through a window, and disconnected the telephone to prevent her from summoning help.<sup>19</sup>
  - a rape victim testified that she tried to leave the bedroom, but the defendant would not permit her to do so, and the defendant locked the doors.<sup>20</sup>
  - the defendant kept the defendant's adult, developmentally disabled son shackled hand and foot in a room in the defendant's home, although the son was not violent.<sup>21</sup>
  - the defendant handcuffed the victim to furniture to prevent the victim from leaving home.<sup>22</sup>
  - the defendant brandished a knife at the victim at 1:00 a.m., forced the victim to drive to another area, handcuffed the victim, and led the victim to another area, before releasing the victim and fleeing.<sup>23</sup>
  - the defendant held persons in an office at gunpoint and threatened to kill everyone in the building if the defendant did not receive a check.<sup>24</sup>
  - the defendant briefly held the victim, blocked her egress from the restroom, and then discouraged her from calling for help.<sup>25</sup>
  - the defendant, attempting to escape, locked a jailer in a cell.<sup>26</sup>
  - the defendant impersonated a police officer, and caused the victim to pull her car to the side of the road, and made her give him her driver's license and vehicle registration.<sup>27</sup>
- Under a statute, the element of "restraint"<sup>28</sup> is adequately shown by evidence of the fact that the defendant's conduct toward the victim invoked enough fear and apprehension about the victim's safety that four other persons, who had been with the defendant and the victim, followed them and took steps to attempt to rescue the victim from potential harm.<sup>29</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Weight of the evidence supported jury's determination that defendant was guilty of unlawful imprisonment in the first degree; even if jury did not find victim entirely credible, jury was entitled to selectively credit victim's testimony that she was in the bathroom of her apartment when defendant suddenly appeared, that she walked toward apartment door to leave but defendant pulled a revolver from his pocket, pointed it at her, and told her to sit down and that he was not joking, that she complied with his demands because he had a gun, and that defendant had hit and choked victim on previous occasions. [N.Y. Penal Law § 135.10. People v. Rosario, 157 A.D.3d 988, 69 N.Y.S.3d 149 \(3d Dep't 2018\).](#)

## [END OF SUPPLEMENT]

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### Footnotes

<sup>1</sup> [Lewis v. State, 511 N.E.2d 1054 \(Ind. 1987\); Com. v. Shaffer, 2000 PA Super 356, 763 A.2d 411 \(2000\).](#)

<sup>2</sup> [Smith v. State, 296 Ark. 451, 757 S.W.2d 554 \(1988\).](#)

Grier v. State, 276 Ga. App. 655, 624 S.E.2d 149 (2005); State v. Morris, 209 So. 3d 420 (La. Ct. App. 5th Cir. 2016).  
People v. Dennee, 291 A.D.2d 888, 738 N.Y.S.2d 146 (4th Dep't 2002).  
Roberts v. State, 599 N.E.2d 595 (Ind. 1992).  
State v. Singleton, 130 N.M. 583, 2001-NMCA-054, 28 P.3d 1124 (Ct. App. 2001).  
Ray v. State, 338 Ga. App. 822, 792 S.E.2d 421 (2016).  
State v. Vance, 240 Neb. 794, 484 N.W.2d 453 (1992).  
Paz v. State, 125 Md. App. 729, 726 A.2d 880 (1999).  
State v. Williams, 172 Conn. App. 820, 162 A.3d 84 (2017).  
Fointno v. State, 487 N.E.2d 140 (Ind. 1986).  
Parks v. State, 734 N.E.2d 694 (Ind. Ct. App. 2000).  
Perrey v. State, 824 N.E.2d 372 (Ind. Ct. App. 2005).  
Mayes v. State, 336 Ga. App. 55, 783 S.E.2d 659 (2016).  
State v. Robinson, 81 Conn. App. 26, 838 A.2d 243 (2004).  
As to first degree unlawful restraint and different degrees of the crime, see § 159.  
Creager v. State, 737 N.E.2d 771 (Ind. Ct. App. 2000) (felony confinement).  
Turner v. State, 253 Ga. App. 760, 560 S.E.2d 539 (2002).  
State v. Cornwell, 2015-Ohio-4617, 48 N.E.3d 169 (Ohio Ct. App. 9th Dist. Wayne County 2015).  
People v. Brown, 24 A.D.3d 812, 805 N.Y.S.2d 171 (3d Dep't 2005).  
Reynolds v. State, 269 Ga. App. 268, 603 S.E.2d 779 (2004).  
Adelman v. State, 828 S.W.2d 418 (Tex. Crim. App. 1992).  
Jones v. State, 259 Ga. App. 698, 577 S.E.2d 878 (2003).  
State v. Fleck, 238 Neb. 446, 471 N.W.2d 132 (1991).  
Smith v. State, 296 Ark. 451, 757 S.W.2d 554 (1988).  
State v. Rice, 167 Conn. App. 615, 142 A.3d 1267 (2016), certification denied, 323 Conn. 932, 150 A.3d 232 (2016).  
Forehand v. State, 270 Ga. App. 365, 606 S.E.2d 589 (2004).  
Mallard v. State, 816 N.E.2d 53 (Ind. Ct. App. 2004).  
§ 156.  
State v. Wyatt, 234 Neb. 349, 451 N.W.2d 84 (1990).



## 32 Am. Jur. 2d False Imprisonment § 163

American Jurisprudence, Second Edition | May 2021 Update


**False Imprisonment**  
John Bourdeau, J.D.

### II. Criminal Liability

## § 163. Penalties and sentencing for criminal false imprisonment or false arrest

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [False Imprisonment](#)  43

### A.L.R. Library

[Penalties for common-law criminal offense of false imprisonment, 67 A.L.R.4th 1103](#)

### Trial Strategy

[Proof of Damages for Sexual Assault, 15 Am. Jur. Proof of Facts 3d 259](#) § 5

A statutory penalty for unlawful restraint is not clearly irrational simply because the penalty is greater than that set for aggravated assault.<sup>1</sup> Some lengthy sentences have been considered proportionate to the crime of false imprisonment or confinement,<sup>2</sup> and thus were not cruel and unusual.<sup>3</sup>

In a number of cases involving prosecutions for a variety of criminal offenses, the imposition of consecutive or aggregate sentences for criminal confinement, false imprisonment, or similar offenses, and another offense, such as kidnapping, sexual assault, or child molestation, has been upheld as not excessive under the circumstances.<sup>4</sup> However, an additional sentence may be excessive, in view of the reduced significance of the confinement compared to the other crimes, such as rape and robbery, committed in the same incident.<sup>5</sup> An aggregate concurrent term is not necessarily disproportionate to false imprisonment and other offenses,<sup>6</sup> or may be allowable if the term is not more than would be authorized for the most severe offense.<sup>7</sup>

## CUMULATIVE SUPPLEMENT

### Cases:

Limiting clause of statutory sentencing multiplier for adult-on-minor sex offenses, which prohibited application of the multiplier if its application results in the lowest permissible sentence exceeding the statutory maximum sentence for the primary offense, did not apply only when the multiplier directly caused the lowest permissible sentence to exceed the statutory maximum, but, rather, applied whenever the lowest permissible sentence after application of the multiplier exceeded the statutory maximum. [Fla. Stat. Ann. § 921.0024\(1\)\(b\)](#). [Hayes v. State](#), 272 So. 3d 815 (Fla. 1st DCA 2019).

### [END OF SUPPLEMENT]

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### Footnotes

- <sup>1</sup> [People v. Wisslead](#), 108 Ill. 2d 389, 92 Ill. Dec. 226, 484 N.E.2d 1081 (1985).
- <sup>2</sup> [Green v. State](#), 811 N.E.2d 874 (Ind. Ct. App. 2004) (16 years).
- <sup>3</sup> [Howard v. State](#), 232 Md. App. 125, 156 A.3d 981 (2017), cert. denied, 453 Md. 366, 162 A.3d 842 (2017) (35 years).
- <sup>4</sup> [State v. Palmer](#), 206 Conn. 40, 536 A.2d 936 (1988); [Quiroz v. State](#), 963 N.E.2d 37 (Ind. Ct. App. 2012); [State v. Williams](#), 76 So. 3d 90 (La. Ct. App. 5th Cir. 2011); [State v. Thurman](#), 273 Neb. 518, 730 N.W.2d 805 (2007); [State v. Winchester](#), 239 Neb. 535, 476 N.W.2d 862 (1991).
- <sup>5</sup> [Fointno v. State](#), 487 N.E.2d 140 (Ind. 1986).
- <sup>6</sup> [State v. Taves](#), 861 So. 2d 144 (La. 2003).
- <sup>7</sup> [Rehberger v. State](#), 267 Ga. App. 778, 600 S.E.2d 635 (2004).